THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No.24553 of 2005

Dated 21-12-2005

Between:

Saladi Chandrasekhar Rao.

..... PETITIONER

AND

Smt. Pothuri Satyavathamma

and three others.

.....RESPONDENTS

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No.24553 of 2005

O R D E R:

This writ petition is filed questioning the order dated 08-11-2005 in I.A.No.43 of 2005 in O.P.No.175 of 2005 on the file of the Andhra Pradesh Cooperative Tribunal, Visakhapatnam.

It is not in dispute that the petitioner and the fourth respondent were elected as the Members of the Managing Committee of the third respondent-Society in the elections held on 26-10-2005 from Ward No.4 and Ward No.9 respectively. Subsequently on 27-10-2005, election to the Office Bearers was held, wherein the petitioner was elected as the President. It appears that the first respondent, who contested from Ward No.9 and lost in the election held on 27-10-2005, filed O.P.No.175 of 2005 under Section 61 (3) and (4) of the Andhra Pradesh Cooperative Societies Act seeking to set aside the election dated 26-10-2005 wherein the fourth respondent was elected as a member of the Managing Committee and also the consequential election dated 27-10-2005 wherein the petitioner was elected as the President. The first respondent along with O.P.No.175 of 2005 filed I.A.No.43 of 2005 seeking interim injunction restraining the fourth respondent therein/petitioner herein from functioning as the President of the Society. The Tribunal by order dated 08-11-2005 granted interim injunction restraining the petitioner herein from functioning as the President of the third respondent-Society. The said order is under challenge in this writ petition.

The learned counsel for the petitioner while placing reliance upon a decision of a Division Bench of this Court in *Ch. Nageswara Rao vs. Ch. Raja Mohan Rao & others* contends that until the main election case is decided, it is not permissible to grant any injunction restraining the elected persons from functioning. The learned counsel further contended that the main O.P. itself was not maintainable since there was no cause of action to challenge the election of the petitioner as the President. In support of the said contention, the learned counsel for the petitioner placed reliance upon a decision of this Court in *V.V. Subba Reddy vs. Court of District Munsif*.

On the other hand, the learned counsel for the first respondent submits that the petitioner ought to have filed an appropriate counter-affidavit raising all the objections before the Tribunal itself.

As can be seen from the impugned order dated 08-11-2005, it is clear that the said order was only an interim order without hearing the respondents therein. In the circumstances, the proper course would have been to file a counter and seek to vacate the interim order, in which event the Tribunal would have passed appropriate orders after hearing both the parties. Without availing the said remedy, the petitioner cannot straightaway maintain this Writ Petition. Therefore, I am of the view that it is not necessary for this Court to express any opinion on merits either with regard to the sustainability of the impugned order of interim injunction granted or with regard to the maintainability of the main O.P.

The writ petition is accordingly disposed of granting leave and liberty to the petitioner to file the necessary counter-affidavit raising all the objections. It is made clear that if any such application is filed within a period of four weeks from today, the same shall be considered and appropriate orders shall be passed after hearing both the parties as expeditiously as possible preferably within a period of four weeks from the date of filing of such application.

Till such orders are passed, the impugned order dated 08-11-2005 shall remain suspended. No costs.

(G. ROHINI, J)

Date:21-12-2005

ghn